An Insty-Primer on Federal Fiscal Law

"I don't like money, actually, but it quiets my nerves."

-- Joe Louis

John McCormack Treanor
Office of Counsel
NAVSUP/ FISC Norfolk

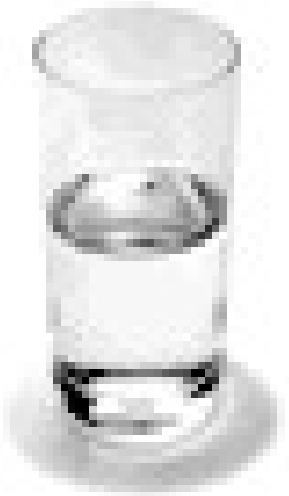
Where It All Begins

"No money shall be drawn from the Treasury, but in consequence of appropriations made by law…"

The "Half Empty Glass" Rule

"The established rule is that the expenditure of public funds is proper only when established by Congress, not that public funds may be expended unless prohibited by Congress."

U.S. v. MacCollom, 426 U.S. 317 (1976)



You don't need to be a pessimist to understand fiscal law, but it helps.

Appropriation Process

- **Authorization Act**
- **Appropriation Act**
- **Apportionment-OMB**
- **Rate of Obligation – SECDEF**
- **Allocation - DEPT COMP**
- **Suballocation – MACOM**
- **Allotment - SUBORD CMD**
- **Suballotment – INSTALLATION**
- **Allowances (Targets)**

Handy Fiscal Terms

- Commitment
- Obligation
- Expenditure
- Funding:
  - Available
  - Expired
  - Closed
- Reprogramming

"PTA"

- **PURPOSE**: Obligation for purpose which money was appropriated by Congress
- **TIME**: Obligation during period of availability
- **AMOUNT**: Sum of money appropriated to support obligation

Purpose

31 U.S.C. 1301

- Based upon Specific authority
  - Example: budget line items
- Implied authority
  - Example: “Necessary Expense Rule”
- No authority
  - Examples:
    - Purchases prohibited by statutory foreign source restrictions
    - Items identified as improper by GAO

Time

- Funds must be obligated before expiration
  - Every account has a “shelf life”
  - Varies according to fund
    - O & M--Annual
    - Military Personnel – Annual
    - Procurement - 3 Years
    - RDT&E - Normally 2 Years
    - Major Military Construction - 5 Years
    - Shipbuilding - 5 Years
    - Stock/Industrial/Working Capital Funds - Indefinite

Amount

- Contracting Officer may only obligate monies that are available (and in hand).
- Bad things to do:
  - Exceed Congressional Appropriation
  - Exceed Administrative Subdivision
  - Exceed funding limitation provided by requiring activity

Bonafide Needs Rule

- May expend fiscal year funds only for the bona fide needs of that same fiscal year.
  - 31 U.S.C. 1502(a)
- So, just what constitutes a bonafide need on 30 September?
  - The “magic contract” test
    - Yeah, I made it up, but it works…

BFN Rule Exceptions

- **Service contracts:**
  - **Single Product/Nonseverable Rule**
  - **Severable 12 Month Rule**
    - **10 U.S.C. 2410a**
- **Supply/Construction Contracts:**
  - **“Lead Time” Exception**
    - **Definition of “long”**
      - ***Proper Fiscal Year Appropriation to Charge for Contract and Contract Increase*, B-219829, 22 July 1986, 65 Comp. Gen. 741**
  - **Inventory Exception**

Other Rules You Should Know

- Miscellaneous Receipts Statute

(If you wish to be smarter than the other guys and gals)

- 31 U.S.C. 3302(b)
- Augmentation Rule
- Voluntary Creditor Rule
- Expense-Investment Thresh

And now we get into the bad stuff…

The "False Commitment"

(Gee, You Mean the Computer Doesn't Think For Me?)

- One Touch Financial (OTF) commits *but does not obligate* federal funds! In order to obligate funds, you must place an order or sign a contract with a vendor. Take note of this, particularly at the end of the fiscal year.

Get those orders placed /contracts awarded before the end of 30 September!

The Food Rule
(Chew On This For A While)

- Absent specific statutory authority, a Federal agency may not provide meals at Government expense to its employees
  - *Provision of Meals on Government Aircraft*, B-218672, 17 October 1985, 65 Comp.Gen. 16
- Same rule applies to feeding the public
  - *Principles of Federal Appropriations Law* (GAO Redbook), Second Edition, Volume I, Chapter 4(C)(5)(d)

The Food Exceptions

Please Serve Yourself

- Conferences
- Travel
- Training
- Awards

Warning Will Robinson! Do not apply any of these exceptions without first consulting with Office of Counsel. Each of these is limited in scope, subject to various conditions, and requires justification /documentation. In particular, the “Conference” and “Travel” exceptions have been significantly curtailed by NAVCOMPT

The Dessert Tray

The obscure and arcane food exceptions

- Recruitment—Uniforms
  - *Small Scale Meals and Snacks*
    - *Lunches…Marine Corps Recruiting Campaign*, B-162642, 9 August 1976 (Unpublished)
      - 37 U.S.C. 428
      - Joint Federal Travel Regulation (JFTR) U7030
  - COI Program
    - COMNAVCRUITCOMINST 4400.1, Chapter 4, Paragraph 415
- Recruitment—Civil Service
  - Sorry, we're out of that
- Official Representation Funds (ORF)
  - SECNAVINST 7042.7J
- John C. Stennis Center, 2 U.S.C. 108(a)(7)
- DEFY Program
- Absolute and Dire Emergencies

Promotional Items

- **“Bad”Items:**
  - **Provided for “name recognition”**
    - **When such is not core mission of the activity**
      - **Great moments in inconsistency: *Department of the Air Force-- Purchase of Decals for Installation on Public Utility Water Tower*, B-301367, 23 October 2003 (Unpublished)**
  - **Provided to increase morale**
    - **When not clearly identified or justified as an award**
- **“Good” Items:**
  - **Specifically authorized by Statute**
  - **Office supplies**
  - **“Necessary Expense”**
    - **Clear and direct nexus to Agency mission**
    - **Not an inherently personal item**
      - **Unless absolutely necessary to fulfill mission**
    - **Minimal cost**

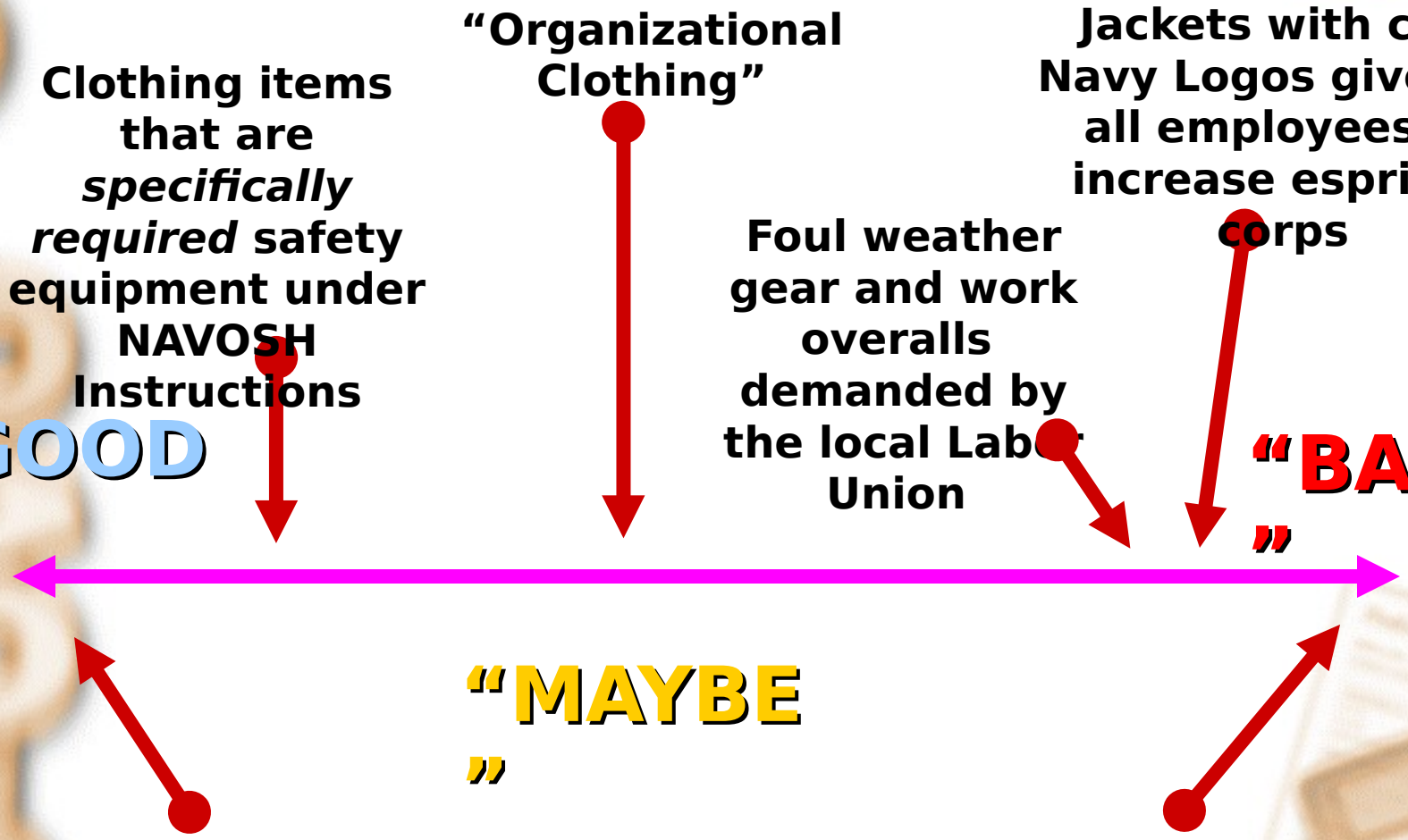
Clothing vs. Non-Clothing

- **Clothing**
  - Coveralls
  - Cold/ Foul Weather Gear
  - Physical Fitness/Spandex Items
- **Non-Clothing**
  - NASA Space Suit
  - Scuba Wetsuit
  - Fireman's Gear
- The "Strolling Through the Mall" Test

The Clothing Exceptions

- Official Civilian DOD Uniforms: 10 U.S.C. § 1593
- Administrative Expenses Act: 5 U.S.C. § 7903
    - Special/unusual clothing
    - Primary benefit is to the Government/ Successful accomplishment of the work is more important than protection/comfort of employee
    - Must involve hazardous duty
- OSHA Compliance: 29 U.S.C. § 66
- Organizational Clothing

Clothing Items


Clothing items that are *specifically required* safety equipment under NAVOSH Instructions
"Organizational Clothing"
Foul weather gear and work overalls demanded by the local Labor Union
Jackets with cool Navy Logos given to all employees to increase esprit d' corps
"GOOD"
"BAD"
"MAYBE"
Deep Sea Diving Suit
Grateful Dead® T-Shirts

The Copier Lease

- Copier/office equipment leases
  - Often structured to be paid via GPC
- Term of contract is either:
  - Multiyear, or
  - Year plus mandatory/automatic options
- This contract is a non-starter
  - *Leiter v. U.S.*, 271 U.S. 204 (1926)
- And no, I don't care if it is on the GSA Schedule. It is still a bad thing.

Banking & Laundering Funds?

"...you can always use it and never lose it."

My advice: Don't take all sales pitches literally, or conduct business with those who do.

USE IT
GovWorks
September 30 is approaching fast.
What's your strategy for buying?
Forget about "use it or lose it." With GovWorks, there's only one side of the coin. When you work with GovWorks, you can avoid the fiscal year crunch, September 30 expiration dates, rushed buys and missed deadlines.
With GovWorks, you can focus on doing your job, while our acquisition professionals move your projects quickly. You'll enjoy budget-friendly pricing while doing business with another federal agency that understands your needs exactly. GovWorks has experience with a wide range of procurement areas including information technology, business process reengineering, telecommunications, e-health solutions and more.
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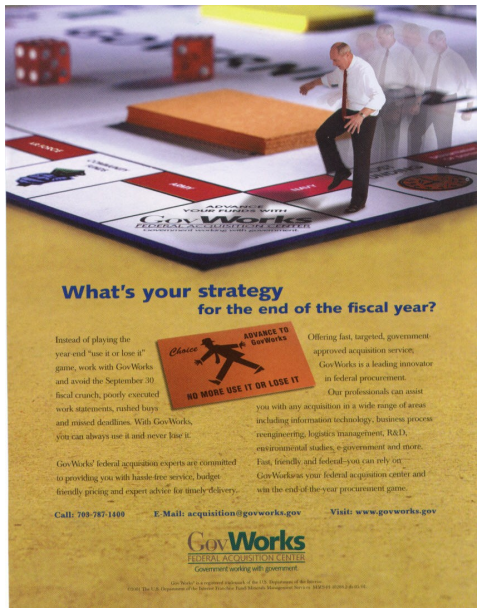
What's your strategy for the end of the fiscal year?
Choice
ADVANCE TO GovWorks
NO MORE USE IT OR LOSE IT
Instead of playing the year-end "use it or lose it" game, work with GovWorks and avoid the September 30 fiscal crunch, poorly executed work statements, rushed buys and missed deadlines. With GovWorks, you can always use it and never lose it.
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Offering fast, targeted, government-approved acquisition services, GovWorks is a leading innovator in federal procurement.
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Government working with government.

See: Comptroller General Report B-286929, 25 April 2001 "http://access.gpo.gov/su_docs/ aces170.shtml"

The Antideficiency Act

- It is a violation of law to either spend or obligate funds:
  - in advance of appropriations, or
  - after the expiration of appropriations, or
  - in excess of appropriations
- 31 U.S.C. 1341
  - Administrative Penalties
  - Criminal Penalties

Great Ways to Violate the ADA

- Not obeying the “basics”
  - PTA
- Violation of foreign source restrictions
- Multi-year contracting
  - With annual appropriations
  - Via “automatic” options
- Expense/Investment threshold violation
- Funding large construction projects with OMN
- Ignoring funding “cutoff” provisions
  - Example: A-76 Program time limitations

Unauthorized Commitment vs. ADA Violation

UAC: Wholly unauthorized individual entered into contract—Government not bound by agreement.

ADA: “Authorized” (e.g. warranted) official overstepped their authority in regard to P-T- or A

ADA-Investigation

- DOD FMR, DOD 7000.14R, Volume 14
- NAVSO P-1000-3

UAC-Ratification

- Federal Acquisition Regulations (FAR) Subpart 1.602-3
- NAVSUPINST 4200.81B, Enclosure 7

Before You Buy…

- Think and analyze:
  - Do the basic rules of fiscal law allow or prohibit these purchases?
    - Never forget “PTA”
  - Does the FAR/DFARS/DOD & Navy Instructions allow/prohibit these purchases?
  - Does the GPC Instruction/policy guidance allow/prohibit these purchases?
    - EBUSOPSOFFINST 4200.1A Enclosure 2
- Are paperwork and procedures correct?
- Don’t forget to ask for legal advice.

“Let’s Be Careful Out There!”

When in doubt: Ask your OGC Attorney.

When not in doubt: Ask your OGC Attorney anyway.

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